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City of Sanibel

800 Dunlop Road
Sanibel, Florida 33957-4096

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Office of the Secretary
Federal Communications Commission
Washington, DC 20554

Re: In the Matter of Preemption of Local Zoning
Regulation of Satellite Earth Stations
IB Docket No. 95-59
DA 91-577
45-DSS-MISC-93

Subject Matter: Reply Comments
of City of Sanibel, Florida

Dear Sirs and Madams:

It has recently come to the attention of the City of Sanibel, Florida that the Federal Communications Commission is considering the further preemption of the zoning powers of local government with regard to satellite receive-only antennas and other types of antenna facilities. It is fair to say that local governments in general are alarmed at increasing federal regulation, especially in the form of preemption of local zoning powers and control. While there should be a healthy respect for the First Amendment aspects of the communications industry, it should be recognized that even that industry should be subject to reasonable governmental regulation. Otherwise, even the Federal Communications Commission would be powerless to regulate.

The Federal Communications Commission has previously adopted a rule of partial preemption which both limits the powers of local government and inconveniences the communication industry. However, it does allow local governments to exercise limited control over health, safety and welfare (especially aesthetics) within the communities, and it does strongly support the interests of communication.

Without getting into citations, it is fair to say that the state and federal courts, including

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the U.S. Supreme Court, have long recognized the importance of the zoning power; the fact that it lies at the core of local government; and the fact that aesthetics, as well as safety, are legitimate considerations in making land use decisions. It is submitted that these considerations do not always have to be completely subordinated to first amendment considerations, especially where the primary relationship to the first amendment only pertains to cost or convenience in installing the communications device.

The courts have also said that they should not become "super zoning boards". By adopting the proposed rule, the Federal Communications Commission will indeed become a super zoning board. It can be guaranteed that the Federal Communications Commission will become hopelessly mired in the morass of local zoning and land use decisions.

Further, there is little need to effectuate such a great change at a time when the current rule has now gone through sufficient litigation to formulate adequate parameters of interpretation.

What would be infinitely more useful than additional federal regulation would be preparation and dissemination of a model ordinance which could be used by local communities as a "safe harbor" for local regulation. In lieu of a model ordinance, a list of recommended considerations or recommended standards could be disseminated. This would preserve the powers of local government, while at the same time eliminating the vast majority of litigation.

In addition to the general comments stated above, the City of Sanibel would like to apprise the commission of concerns as it relates to the City of Sanibel and to other local governments similarly situated.

First, the City of Sanibel (population +- 5,700) is located on Sanibel Island in the Gulf of Mexico, approximately three miles from the mainland and twenty miles from Fort Myers. The City and the island are coterminous. Over half of the island is dedicated to conservation of natural resources and wildlife, including the J.N. "Ding" Darling National Wildlife Refuge which is operated by the U.S. Fish and Wildlife Commission. The rest of the island is devoted to passive recreational uses and

low-density residential and vacation resort use.

The Special Act by the Legislature of the State of Florida establishing the City includes the following language in the preamble, as a reason for incorporating:

" . . . in the planning for the orderly future development of an island community known far and wide for its unique atmosphere and unusual natural environment and to ensure compliance with such planning so that these unique and natural characteristics of the island shall be preserved. . . ."

The Sanibel Comprehensive Land Use Plan and the Land Development Code implementing it, are quite unique in that they are based almost entirely upon considerations of the natural environment with only limited intrusion by man; only to the extent necessary; and in such a manner as to maintain the natural environment and the natural beauty of the island.

Upon approaching the island, one will note very few objects or structures protruding above the treeline. Essentially, these are limited to the larger commercial antennas or towers which, of course, are the subject of other aspects of federal preemption.

Satellite dish antennas (the large ones) have been permitted at various residential and commercial locations. However, through the local zoning process, they have been accommodated while at the same time have been placed in such a manner as to be virtually unnoticeable. It has never been necessary to resort to litigation in order to achieve this accommodation.

The newer types of satellite dish antennas are both less intrusive and potentially more ubiquitous than the other type. However, this merely presents a new challenge at the local level and does not mean that anyone has to give up entirely on accommodation of aesthetics and communications. To demand that this occur is inappropriate behavior on the part of the communications industry. To allow it to happen would be gross overreaction on the part of the Federal Communications Commission.

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Any local elected official can attest to the fact that it is a unique and humbling experience to face a roomful of residents angry over inappropriate or unpopular land uses. There is also a saying that the "process is the punishment". Hopefully, the Federal Communications Commission will deem it advisable to leave the process to the local governments and instead provide assistance to local governments in developing their own standards.

Finally, if there must be a further preemption, which will include the proposed waiver process, it is urged that a waiver be available for environmentally sensitive or scenic areas.

Thank you for the opportunity to comment.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Wallace M. Kain", is written over the typed name.

Wallace M. Kain
Mayor

WMK:DL